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Supreme Court, U.S.
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No. 03-62

IN THE

Supreme Court of the United States

PIER CARLO FALOTTI,

Petitioner,

v.

ORACLE CORPORATION,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO
THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

REPLY TO BRIEF IN OPPOSITION

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REPLY TO BRIEF IN OPPOSITION

I. The Reasons That Falotti Has Asserted For Granting His Present Petition Satisfy This Court's Standards For Review And Were Properly Raised Below

In his opening Petition ("Pet."), Pier Carlo Falotti ("Falotti") cites to no less than 17 decisions by this Court as precedent supporting his choice-of-law and international comity grounds for appeal. But rather than addressing any of these decisions *on their merits*, Oracle's Opposition ("Opp.") instead focuses upon a litany of flimsy *procedural attacks* that prove unavailing for the reasons detailed below.[1]

First, Oracle argues that Falotti has failed to "satisfy this Court's standards for review" because he purportedly "has identified no conflict between the decision below and any decision of another United States Court of Appeals or a state court of last resort on an important federal question." (Opp. at 14-15). What such an argument conveniently overlooks, however, is the alternative criterion of Supreme Court Rule 10(c) which allows for review when a "United States court of appeals...has decided an important federal question in a way that conflicts with relevant decisions of this Court." Here, by refusing to respect and enforce Falotti's binding Swiss contractual rights, the Ninth Circuit has clearly violated this Court's well-established choice-of-law and international comity teachings dating back to at least the 1830s.

Second, Oracle also argues that this Court should decline review as a matter of discretion because the

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[1] The remainder of Oracle's Opposition largely consists of a "Counter Statement Of The Case" that repeatedly mischaracterizes the record below in a gratuitous effort to paint Falotti with a black hat. (Opp. at 1-9). However, since few of these ostensible "facts" asserted by Oracle have any relevance to the issues raised by this appeal, and since they are unreflective of any actual findings made by the lower courts, Falotti will leave their debate for a later day.

present case is purportedly so "unique and fact-bound" that is "does not have any far-reaching importance." (Opp. at 9, 15). Yet in addition to Falotti having already demonstrated the contrary (Pet. at 1-2), this argument is further belied by the stance that Oracle itself has taken in this case. Indeed, elsewhere in its Opposition, Oracle contends that unless the Ninth Circuit's erroneous decision herein is upheld, "multi-national corporation[s] like Respondent, with employees all over the world, could not administer a stock option incentive program in a uniform manner, leaving employees' entitlement to stock options dependent on the vagaries of local employment laws in dozens of different countries." (Opp. at 13).

Similarly, in the proceedings below, Oracle solicited the filing of an *amicus curiae* brief from the so-called Employers Group of which Oracle is a charter member. The *amicus* brief argued on Oracle's behalf that the present case reaches well "beyond the immediate concerns of the parties" so as to significantly impact all "multistate and multinational companies who desire to provide stock option incentives to their employees." According to the Employers Group, Falotti's contentions in this case "pose a genuine threat to the continued viability of the ... [stock option] form of compensation," and if Falotti were ultimately to prevail on appeal it "would spell the end for stock option plans as we know them today."[2]

Third and finally, Oracle's argument that Falotti is somehow barred from asserting "principles of

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[2] The greater importance of this case, of course, is the regrettable precedent it sets permitting American multinational corporations to wrongfully breach and disregard the contractual employment rights of their foreign-based employees in the ostensible name of stock option plans that are silent as to all employment related issues.

international comity" before this Court because they were supposedly "not raised or resolved in the lower court[s]" is simply frivolous. (Opp. at 10-11).[3] Falotti's primary theory of this case has always been premised upon the core tenet of international comity -- *viz.*, that in California both the Oracle Compensation Committee and the courts were required to respect and enforce the contractual rights that Oracle had conferred upon Falotti under their Swiss law employment agreement. *See, e.g.*, **(i) (Pet. Op. Br. at 60)** (the District Court erred when it "wrongly concluded that the committee [was not] required to consider [Falotti's] Swiss law" contractual rights); **(ii) (Pet. Rep. Br. at 12)** ("California law required the Committee to honor the Swiss law rights incorporated into... [Falotti's] Employment Agreement."); **(iii) (Pet. Reh. Br. at 4)** ("in applying California law under the Stock Option Agreement, the Committee was required *to take Falotti as it found him* -- i.e., as an employee with preexisting and fully enforceable [Swiss law] contractual rights against Oracle which precluded a purely at-will termination.").[4]

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[3] Notably, Oracle does not even *attempt* to argue that this Court would be barred from reviewing the choice-of-law issues likewise incorporated in Falotti's "Questions Presented."

[4] Moreover, as Falotti has previously shown (Pet. at 9-12), the lower courts went on to erroneously resolve these international comity issues in favor of Oracle. The District Court held that there was no "require[ment] to consider [Falotti's] Swiss law" rights, and that doing so would improperly "override an express choice-of-law provision in an internationally-administered stock-option plan." (*Id.*)(*citing* App. B at 36a-37a). The Ninth Circuit affirmed by similarly refusing to respect and enforce Falotti's Swiss contractual rights, concluding that this would be tantamount to wrongly "ignoring the [stock option plan's California] choice-of-law clause in favor of Swiss law." (*Id.*)(*citing* App. A at 10a).

In sum, Oracle's Opposition fails to erect any procedural barrier that would prevent this Court from reaching the merits of Falotti's appeal.

II. Falotti Is Appealing The Ninth Circuit's *A Priori* Violations Of Well-Established Choice-Of-Law And International Comity Principles Rather Than Its Holdings As To The Applicability Or Interpretation Of California Law

Throughout its Opposition, Oracle seeks to "de-federalize" the subject matter of Falotti's Petition by mischaracterizing it as presenting a dispute about the applicability and interpretation of California law. (Opp. at i, 9, 11-12, 15). According to Oracle, Falotti simply disagrees "with the Ninth Circuit's well-reasoned application of settled law to the particular facts of his case," and his "real objection is that the Ninth Circuit misconstrued California law." (*Id.* at 15, 11). As demonstrated below, however, such arguments reflect a profound misunderstanding of the questions that Falotti has presented to this Court for review.

As an initial matter, Falotti is *not* appealing the Ninth Circuit's conclusion that, pursuant to an express choice-of-law provision, California law properly governs the administration of Oracle's stock option plan. That conclusion was never a subject of dispute between the parties in the proceedings below.

Nor does Falotti's current Petition reflect any disagreement with the Ninth Circuit over the substance of California law. As Falotti has shown, California law is clear that where, as here, an employee has an at-will employment relationship *modified by* the rights to receive termination notice or illness protection periods, the employment relationship continues intact until after those

contractual periods have fully run their course. (Pet. at 21-22)(*citing Romano v. Rockwell Internat. Inc.*, 14 Cal. 4th 479, 495 (1996); *Chardon v. Fernandez*, 454 U.S. 6, 8-9 (1981)). This is true irrespective of whether the employer chooses to exercise its control over the employee by actually demanding his continued work performance. (Pet. at 22-25)(*citing Malloy v. Fong*, 37 Cal. 2d 356, 370 (1951); *Bertero v. National General Corp.*, 254 Cal. App. 2d 126, 132-34 (1967); *Lyon v. Pollard*, 87 U.S. 403, 407 (1874)). Not once in the proceedings below did either Oracle or the Ninth Circuit ever take issue with these fundamental principles of California law that support Falotti's claims to relief.

What Falotti's Petition instead addresses is a legal error of federal and international importance that the Ninth Circuit committed *in the first instance* before it ever reached the stage of applying or construing California law. In short, the Ninth Circuit held as a matter of federal jurisprudence that there is no requirement to respect and enforce the Swiss contractual rights conferred by Falotti's employment agreement with Oracle, and that Falotti can accordingly be treated as a *purely at-will employee* in California bereft of any contractual protections. (Pet. at 11-13). But by embracing such a legal fiction,[5] the Ninth Circuit departed from this Court's international comity teachings which require that United States

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[5] Oracle seeks to recharacterize this *legal fiction* as a "factual finding[]...[that does] not warrant this Court's review." (Opp. at 11-12 n. 6). But the courts below never denied as a *factual matter* the existence or validity of the parties' employment agreement, nor disputed the substance of Falotti's Swiss law protections incorporated therein. Rather, the lower courts erroneously found that as a *legal matter* this agreement need not be respected and enforced in California when determining Falotti's stock option rights.

federal courts give effect to valid private rights arising under foreign law. (*Id.* at 13-16). Moreover, the Ninth Circuit also misapplied this Court's choice-of-law precedent in concluding that the election of California law in Oracle's stock option plan somehow justified a rejection of the mandates of international comity. (*Id.* at 17-19).

Ironically, having committed these dispositive legal errors at the outset of its analysis, the Ninth Circuit then proceeded on to *correctly* apply California law. Indeed, if Falotti were truly a *purely at-will employee* with no additional contractual protections, then Oracle would have had every right under California law to fire him "effective immediately" on May 31, 2000, and to withhold further stock options that had not yet vested as of that date. (Pet. at 6). But those were decidedly *not* Falotti's circumstances. The Ninth Circuit arrived at such a legal fiction only by initially disregarding the parties' Swiss law employment agreement in violation of this Court's choice-of-law and international comity directives.

Thus, contrary to Oracle's Opposition arguments, Falotti's appeal raises fundamental questions of federal and international importance that are unrelated to any claim that the "Ninth Circuit misconstrued California law." (Opp. at 11).

III. The Ninth Circuit's Violations Of This Court's Well-Established Choice-Of-Law And International Comity Principles Were Outcome-Determinative Of The Proceedings Below

Oracle's final fallback position is that "there is no reason to believe that the application of principles of 'international comity' would have been outcome-

determinative" in the proceedings below. (Opp. at 12). According to Oracle, even if the Ninth Circuit had respected and enforced Falotti's contractual rights to Swiss law termination notice and "forbidden" periods, it "would have had no impact on" its determination that he purportedly "ceased to be employed" for stock option purposes on May 31, 2000. (*Id.* at 11). As demonstrated below, however, these arguments are premised upon a series of demonstrably false propositions.

First, Oracle argues that enforcement of Falotti's Swiss law rights would have been immaterial because those rights existed only as against its subsidiary, *Oracle Switzerland*, and formed no part of any agreement between Falotti and *Oracle itself*. (Opp. at 7). But what Oracle fails to inform this Court is that the courts below long ago decided this issue to the contrary -- a decision from which Oracle has never taken an appeal. Indeed, the District Court held that *Oracle itself* entered into an employment contract with Falotti in which it agreed that their entire "employment [relationship] will be governed by the laws of Switzerland." (App. B to Pet. at 22a).[6]

Second, Oracle now baldly asserts for the first time in this litigation that, in substance, Falotti's Swiss law termination notice and "forbidden" periods would not have provided a period of *continued employment*, but merely a limited right to "continued salary and benefits." (Opp. at 7 & n. 2). Yet as Falotti demonstrated in the proceedings below -- without any contradiction from Oracle -- Swiss employment continues in full force and effect throughout these

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[6] In any event, under the express language of the stock option plan, Falotti had the right to continue vesting in stock options for so long as he remained an employee of either Oracle "or [a] Subsidiary." (App. B to Pet. at 24a).

contractual periods, and all rights and obligations between employer and employee remain wholly intact for their duration. (Pet. at 3-4)(*citing* Swiss legal treatises and Swiss Supreme Court case law).[7]

Third, Oracle suggests that had it voluntarily chosen to release Falotti from performing further work duties during his termination notice and "forbidden" periods, Falotti would have had no right to "obtain reinstatement." But as Oracle is well aware, this suggestion is legally irrelevant. The Swiss Supreme Court has held as a matter of law that the employment relationship remains wholly intact for the duration of these contractual periods, irrespective of whether such a release has been granted. (Pet. at 3-4)(*citing* G. v. P. SA, ATF 118 II 140 (Swiss Supreme Crt. May 20, 1992))(SAD63). Oracle has never previously disputed this point, nor the fact that California law holds likewise. *See* (Pet. at 24-25).

Fourth, Oracle argues that Falotti's "right to vest in stock options depended entirely upon the terms of the Stock Option Agreement," rather than upon any rights that Falotti might enjoy under his employment agreement. (Opp. at 3). But this notion that Oracle's stock option plan somehow existed in a self-contained vacuum is obviously untenable.[8] Indeed, while the plan premises stock option rights on a "ceases to be employed" standard, it provides no definition for that

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[7] Falotti included translated copies of these Swiss law authorities in the record below and, until today, Oracle has never disputed their holdings. See, e.g., (5:ER1158, 1171; SAD63, 86-88, 188, 220-22, 276-81). Moreover, Oracle's further assertion that Falotti's "own Swiss law expert agreed that he was no longer a 'full-time' employee after" May 31, 2000 is simply untrue. *Compare* (Opp. at 5) *with* (4:ER1071, 1075, 1077-78; 5:ER1228).

[8] As even Oracle admits, the integration clause in the stock option plan covers only "the subject of stock options," and does *not* encompass any employment-related issues. (Opp. at 2).

phrase, and it is otherwise completely silent as to any and all employment-related issues. The one exception is language providing that the employment "relationship is [only] terminable in accordance with the terms of any agreement you have with the company governing the relationship."[9] Thus, the Compensation Committee's good faith obligations required them to look outside the stock option plan to the real world circumstances of Falotti's employment, and to the governing law that supplies common meaning to the plan's undefined terms.

In sum, had the dictates of international comity been followed in this case, the outcome would have been different because enforcement of Falotti's contractual and legal rights to continued employment would have entitled him to continued vesting in stock option until at least September 30, 2000 -- i.e., the first date on which Falotti even arguably "ceased to be employed."[10]

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[9] Oracle now argues that this language is intended to apply only to its "consultants or advisers," and *not* to its "employees or officers." (Opp. at 6). Oracle apparently would draw a distinction between its consultants and advisers who typically have written engagements with the company, and its *U.S.* employees and officers who are employed on a purely at-will basis without the benefit of written employment contracts. What Oracle fails to inform this Court, however, is that its senior *European* executives like Falotti are always required to execute written employment agreements, and thus are in a position directly analogous to Oracle's consultants and advisers, rather than to their *U.S.* executive counterparts.

[10] Besides disputing the importance of Falotti's Swiss law rights, Oracle now offers newly minted denials that it ever breached them. In the record below, however, Oracle candidly admitted to having informed Falotti in writing of its outright refusal to honor his contractual termination notice and "forbidden" periods. (7:ER1888-89).

CONCLUSION

For the foregoing reasons, and for the reasons previously set forth in his opening papers, Falotti respectfully requests that this Court grant his present petition for a writ of certiorari.

Respectfully submitted,

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